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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,459	12/08/2003	Mark J. Levine	930009-2010	2911

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NEW YORK, NY 10151

EXAMINER

PIZIALI, ANDREW T

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/730,459

Applicant(s)

LEVINE ET AL.

Examiner

Andrew T. Piziali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-30 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-14 and 23-30, drawn to a hydroentangling support fabric, classified in class 442, subclass 337.
 - II. Claims 15-22, drawn to a method of producing a support fabric, classified in class 139, subclass 97.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of Group II and Group I are related as process of making and product made.

The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process.

Incorporating flattened filaments within a support fabric after production of the support fabric can make the product as claimed. Making the initial support fabric with flattened filaments can also make the product as claimed rather than incorporating flattened filaments into a separate support layer.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. In the event that claims directed to the product are elected, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include

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all the limitations of the allowable product claim will be rejoined. Therefore, upon the election of Group I, rejoinder will be considered upon indication of allowable subject matter pursuant to MPEP 821.04.

5. This application also contains claims directed to the following patentably distinct species of the claimed invention:

Species Group I

Species 1, drawn to a support fabric, or a method of producing a support fabric, wherein the flattened filaments include only a portion of the MD filaments (see claim 2).

Species 2, drawn to a support fabric, or a method of producing a support fabric, wherein the flattened filaments include all of the MD filaments (see claim 3).

Species Group II

Species 1, drawn to a support fabric, or a method of producing a support fabric, wherein the flattened filaments include only a portion of the CD filaments (see claim 4).

Species 2, drawn to a support fabric, or a method of producing a support fabric, wherein the flattened filaments include all of the CD filaments (see claim 5).

Species Group III

Species 1, drawn to a support fabric, or a method of producing a support fabric, wherein the fabric is a double layer fabric (see claims 7-9).

Species 2, drawn to a support fabric, or a method of producing a support fabric, wherein the fabric is a triple layer fabric (see claims 10-12).

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Species Group IV

Species 1, drawn to a support fabric, or a method of producing a support fabric, wherein said “one layer” is the wear side layer (see claims 8 and 11).

Species 2, drawn to a support fabric, or a method of producing a support fabric, wherein said “one layer” is the forming side layer (see claims 9 and 12).

Species Group V

Species 1, drawn to a support fabric, or a method of producing a support fabric, wherein the flattened filaments are formed through extrusion prior to weaving of the support layer (see claims 16 and 24).

Species 2, drawn to a support fabric, or a method of producing a support fabric, wherein the flattened filaments are formed by calendering only one side of a source fabric prior to weaving the support fabric (see claims 17-19 and 25-27).

Species 3, drawn to a support fabric, or a method of producing a support fabric, wherein the flattened filaments are formed by calendering both sides of a source fabric prior to weaving the support fabric (see claims 17-18, 20, 25-26 and 28).

Species 4, drawn to a support fabric, or a method of producing a support fabric, wherein the flattened filaments are formed by sanding a source fabric (see claims 21 and 29).

6. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, from each of Species Groups I-V, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 6, 13-15, 22-23 and 30 appear to be generic.

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7. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

8. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

9. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

10. A telephone call was made to Ronald Santucci on 9/6/2005 to request an oral election to the above restriction requirement, but did not result in an election being made.

11. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement may be traversed (37 CFR 1.143).

12. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

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application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

atp


ANDREW T. PIZIALI
PATENT EXAMINER